

1 later than the date on which the agency issues the notice of  
2 proposed rulemaking for that proceeding pursuant to subsec-  
3 tion (b) or, if the agency is not required to issue such a notice,  
4 no later than the date the agency first issues or receives ma-  
5 terial required to be included in the file. The file shall be  
6 made available to the public and shall include—

7           “(A) the notice of proposed rulemaking and any  
8 supplemental notice concerning the rulemaking;

9           “(B) a copy of all written comments on the pro-  
10 posed rule which were submitted to the agency after  
11 the publication of the notice of proposed rulemaking;

12           “(C) all material which the agency by statute or  
13 rule is required to issue in connection with the rule-  
14 making or which the agency decides to make part of  
15 the record;

16           “(D) a copy of all written material pertaining to  
17 the rule, including any drafts of the proposed or final  
18 rule, submitted by the agency to the President or the  
19 designee directed by the President to review proposed  
20 or final rules for their regulatory impact; and

21           “(E) a written explanation of the specific reasons  
22 for any significant changes made by the agency in the  
23 drafts of the proposed or final rule which respond to  
24 any comment received by the agency on the draft pro-  
25 posed, proposed draft final, or final rule, made by the

1       President or the designee directed by the President to  
2       review proposed or final rules for their regulatory  
3       impact.

4       “(2) The file required by paragraph (1) of this subsection  
5       need not include any material described in section 552(b) of  
6       this title. If the agency is permitted by law to rely on, and  
7       does rely on, such material in promulgating a rule, the  
8       agency shall include in such file a statement noting the exist-  
9       ence of any such material and the statutory basis upon which  
10      the material is exempt from public disclosure. Notwithstand-  
11      ing the preceding sentence, the file shall include all material  
12      described in subparagraph (D) or (E) of paragraph (1).

13      “(3) No court shall hold unlawful or set aside an agency  
14      rule because of a violation of subparagraph (D) or (E) of  
15      paragraph (1) of this subsection unless the court finds that  
16      such violation has precluded fair public consideration of a ma-  
17      terial issue of the rulemaking taken as a whole. Judicial  
18      review of compliance or noncompliance with subparagraphs  
19      (D) and (E) of paragraph (1) of this subsection shall be limited  
20      to review of action or inaction on the part of an agency.”.

21

#### JUDICIAL REVIEW

22      SEC. 103. Section 706 of title 5, United States Code, is  
23      amended to read as follows:

1   **“§ 706. Scope of review**

2           “(a) To the extent necessary to decision and when pre-  
3   sented, the reviewing court shall independently decide all rel-  
4   evant questions of law, interpret constitutional and statutory  
5   provisions, and determine the meaning or applicability of the  
6   terms of an agency action. The reviewing court shall—

7           “(1) compel agency action unlawfully withheld or  
8           unreasonably delayed; and

9           “(2) hold unlawful and set aside agency action,  
10          findings, and conclusions found to be—

11                  “(A) arbitrary, capricious, an abuse of discre-  
12                  tion, or otherwise not in accordance with law;

13                  “(B) contrary to constitutional right, power,  
14                  privilege, or immunity;

15                  “(C) in excess of statutory jurisdiction, au-  
16                  thority, or limitations, or short of statutory right;

17                  “(D) without observance of procedure re-  
18                  quired by law;

19                  “(E) unsupported by substantial evidence in  
20                  a proceeding subject to sections 556 and 557 of  
21                  this title or otherwise reviewed on the record of  
22                  an agency hearing provided by statute; or

23                  “(F) unwarranted by the facts to the extent  
24                  that the facts are subject to trial de novo by the  
25                  reviewing court.

1       “(b) In making the foregoing determinations, the court  
2 shall review the whole record or those parts of it cited by a  
3 party, and due account shall be taken of the rule of prejudi-  
4 cial error.

5       “(c) In deciding questions of law pursuant to the follow-  
6 ing sentences of this subsection, the court shall exercise its  
7 independent judgment without according any presumption in  
8 favor of or against agency action. In making determinations  
9 on questions of law, other than statutory jurisdiction, the  
10 court shall give the agency’s interpretation such weight as it  
11 warrants, taking into account factors such as the discretion-  
12 ary authority provided to the agency by law. In making de-  
13 terminations of law concerning statutory jurisdiction under  
14 subsection (a)(2)(C) of this section, the court shall determine  
15 whether the agency’s action is within the scope of the agen-  
16 cy’s jurisdiction on the basis of the language of the statute or,  
17 in the event of ambiguity, other indicia of ascertainable legis-  
18 lative intent.

19       “(d) In determining whether agency action in adopting a  
20 rule, other than a rule to which subsection (a)(2)(E) of this  
21 section applies, is arbitrary, capricious, an abuse of discre-  
22 tion, or otherwise not in accordance with law, the court shall  
23 consider whether there is substantial support in the rulemak-  
24 ing file, viewed as a whole, for determinations of fact on

1 which the agency was required to rely in adopting the rule or  
2 which the agency asserted as the basis for the rule.”.

3 APPEALS OF AGENCY ORDERS

4 SEC. 104. (a) Section 2112(a) of title 28, United States  
5 Code, is amended by striking out the last three sentences and  
6 inserting in lieu thereof the following: “If proceedings are  
7 instituted in two or more courts of appeals with respect to  
8 the same order, the court in which the agency, board, com-  
9 mission, or officer concerned is to file the record shall be  
10 determined as follows:

11 “(1) If within ten days after issuance of the order  
12 the agency, board, commission, or officer receives writ-  
13 ten notice, in a manner that the agency shall prescribe  
14 by rule, that proceedings have been instituted in two or  
15 more courts of appeals, the agency, board, commission,  
16 or officer shall, promptly after the expiration of that  
17 ten-day period, so inform the Administrative Office of  
18 the United States Courts and shall identify each such  
19 court in which such proceedings are pending. As soon  
20 as is practicable after receiving such notice, the Ad-  
21 ministrative Office of the United States Courts shall  
22 designate one court, according to a system of random  
23 selection, from among those identified by the agency,  
24 board, commission, or officer, and the record shall be  
25 filed in the court so designated.

1           “(2) If within ten days after issuance of the order  
2       the agency, board, commission, or officer has received  
3       written notice, as provided in the rules prescribed pur-  
4       suant to paragraph (1) of this subsection, that proceed-  
5       ings have been instituted in only one court of appeals,  
6       the record shall be filed in that court notwithstanding  
7       the institution of any proceedings in any other court of  
8       which such written notice was not received by the  
9       agency, board, commission, or officer within that ten-  
10      day period.

11           “(3) In all other cases, the record shall be filed in  
12      the court in which proceedings with respect to the  
13      order were first instituted.

14 All courts in which proceedings have been instituted with  
15 respect to the same order, other than the court in which the  
16 record is filed pursuant to this subsection, shall transfer those  
17 proceedings to the court in which the record is so filed. For  
18 the convenience of the parties in the interest of justice, the  
19 court in which the record is filed may thereafter transfer all  
20 the proceedings with respect to that order to any other court  
21 of appeals. Until the record concerning an order is filed in a  
22 court pursuant to this subsection, any court of appeals in  
23 which proceedings with respect to that order have been insti-  
24 tuted within ten days after the issuance of such order may, to  
25 the extent authorized by law, postpone the effective date of

1 the order as necessary to permit the designation of a court  
2 pursuant to paragraph (1) of this subsection. Such action by  
3 the court may thereafter be modified, revoked, or extended  
4 by the court in which the record is filed or by any other court  
5 of appeals to which the proceedings are transferred.”.

6 (b) Section 604(a) of title 28, United States Code, is  
7 amended by redesignating paragraph (17) as paragraph (18)  
8 and by inserting immediately after paragraph (16) the follow-  
9 ing new paragraph:

10 “(17) Where proceedings with respect to an order  
11 of any agency, board, commission, or officer have been  
12 instituted in two or more courts of appeals and the  
13 agency, board, commission, or officer, pursuant to sec-  
14 tion 2112(a)(1) of this title, has been notified of such  
15 proceedings within ten days after issuance of the order,  
16 administer a system of random selection to determine  
17 the appropriate court in which the record is to be  
18 filed;”.

19 **PARTICIPATION EXPENSES**

20 **SEC. 105.** (a) Subchapter I of chapter 5 of title 5,  
21 United States Code, is amended by adding at the end thereof  
22 the following new section:

23 **“§ 505. Participation expenses**

24 “(a) No agency may, except as provided in section 504  
25 of this title or unless specifically authorized by any other stat-

1 ute, provide financial assistance to pay the expenses of per-  
2 sons participating or intervening in an agency proceeding.

3 “(b) For the purposes of this section—

4 “(1) ‘agency’ means an agency as defined in sec-  
5 tion 551(1) of this title; and

6 “(2) ‘agency proceeding’ means any agency pro-  
7 ceedings as defined in section 551(12) of this title.”.

8 (b) The section analysis of chapter 5 of title 5, United  
9 States Code, is amended by inserting after the item relating  
10 to section 504 the following new item:

“505. Participation expenses.”.

11 TECHNICAL AND CONFORMING AMENDMENTS

12 SEC. 106. (a) Section 551(4) of title 5, United States  
13 Code, is amended by striking out “services or allowances  
14 therefor or of valuations, costs, or accounting, or practices  
15 bearing on any of the foregoing” and inserting in lieu thereof  
16 “services, or allowances therefor or of valuations, costs or  
17 accounting, or practices relating to such rates, wages, struc-  
18 tures or reorganizations, prices, facilities, appliances, serv-  
19 ices, or allowances”.

20 (b) Section 551(5) of such title is amended by striking  
21 out “rule making” and inserting in lieu thereof “rule-  
22 making”.

23 (c) Section 556(d) of such title is amended in the last  
24 sentence by striking out “rule making” and inserting in lieu  
25 thereof “rulemaking”.



1 (d) Section 557(b) of such title is amended by striking  
 2 out “rule making” and inserting in lieu thereof “rule-  
 3 making”.

4 (e) The item relating to section 553 of title 5, United  
 5 States Code, in the section analysis of chapter 5 of such title  
 6 is amended by striking out “Rule making” and inserting in  
 7 lieu thereof “Rulemaking”.

## 8 TITLE II—CONGRESSIONAL REVIEW OF AGENCY 9 RULES

10 SEC. 201. (a) Part I of title 5 of the United States Code  
 11 is amended by inserting after chapter 7 the following new  
 12 chapter:

### 13 “CHAPTER 8—CONGRESSIONAL REVIEW OF 14 AGENCY RULEMAKING

“Sec.

“801. Definitions.

“802. Congressional review of agency rules.

“803. Procedure for committee consideration of resolutions.

“804. Procedure for floor consideration of resolutions.

“805. Computation of calendar days of continuous session.

“806. Rulemaking power of Congress.

“807. Effect on judicial review.

#### 15 “§ 801. Definitions

16 “(a) For purposes of this chapter—

17 “(1) the term ‘agency’ means an agency as de-  
 18 fined in section 551(1) of this title;

19 “(2) the term ‘rule’ means a rule as defined in  
 20 section 621(5) of this title which is subject to section  
 21 553 of this title;

1           “(3) the term ‘major rule’ means a major rule  
2       within the meaning of section 621 of this title;

3           “(4) the term ‘emergency rule’ means a rule  
4       which an agency may make effective, for a period of  
5       not more than two hundred and ten days, notwith-  
6       standing any requirement for public notice and com-  
7       ment and is promulgated pursuant to a finding by the  
8       agency that delay in the effective date would—

9           “(A) seriously injure an important public  
10       interest,

11          “(B) substantially frustrate legislative poli-  
12       cies, or

13          “(C) seriously harm a person or class of  
14       persons without serving any important public  
15       interest;

16          “(5) the term ‘promulgate’ or ‘promulgation’  
17       means to file or the filing of a final rule with the Office  
18       of the Federal Register for publication;

19          “(6) the term ‘appropriate committee’ means—

20               “(A) the one committee of each House of  
21       Congress which has primary legislative jurisdic-  
22       tion over the statute under which a rule is pro-  
23       mulgated or over the agency which has promul-  
24       gated a rule, or



1           on                           , 19   .', with the appropriate  
2           title of the rule, agency, and date inserted in the  
3           blanks, respectively; and

4           “(8) the term ‘transmitted to the Congress’, with  
5           respect to a rule, means transmitted to the Congress  
6           pursuant to section 802(a)(1) of this title.

7   **“§ 802. Congressional review of agency rules**

8           “(a)(1) On the first day on which both Houses of Con-  
9   gress are in session after the promulgation of a rule, the  
10   agency shall transmit a copy of the rule to the Secretary of  
11   the Senate and the Clerk of the House of Representatives.  
12   Such rule shall be considered only as a recommendation of  
13   the agency to the Congress and shall have no force and effect  
14   as a rule unless the rule has become effective in accordance  
15   with this section.

16          “(2) A major rule may not take effect unless an appro-  
17   priate resolution is enacted within ninety days after the date  
18   on which the major rule is transmitted to the Congress.

19          “(3)(A) Subject to subparagraph (B), a rule other than a  
20   major rule may not take effect if within ninety days after the  
21   rule is transmitted to the Congress an appropriate resolution  
22   is enacted with respect to the rule.

23          “(B) A rule other than a major rule may take effect—  
24               “(i) at the end of the period of sixty days after the  
25               date the rule is transmitted to the Congress if neither

1 House of Congress has completed action on an appro-  
2 priate resolution with respect to the rule;

3 “(ii) upon the rejection by one House of an appro-  
4 priate resolution with respect to the rule; or

5 “(iii) on such later date as the rule may specify.

6 “(b)(1) An agency may not promulgate a new rule sub-  
7 stantially the same as—

8 “(A) a major rule for which an appropriate resolu-  
9 tion has not been enacted; or

10 “(B) any other rule subject to this section for  
11 which an appropriate resolution has been enacted.

12 “(2) If a rule of an agency does not become effective  
13 under subsection (a) and the agency, subject to paragraph (1),  
14 promulgates a rule which relates to the same subject matter  
15 as the disapproved rule, such rule may be based in whole or  
16 in part on the rulemaking record of the first rule. The new  
17 rule shall be subject to subsection (a).

18 “(c) If a rule which was promulgated subject to a statu-  
19 tory time limit for rulemaking does not become effective  
20 under subsection (a), the statutory time limit shall apply also  
21 to the rulemaking begun as a result of the disapproval of the  
22 rule but shall begin on the date on which the rule was pre-  
23 cluded from becoming effective under subsection (a).

24 “(d)(1) On the same day on which an agency transmits a  
25 rule to the Congress pursuant to this section, that agency

1 shall transmit a copy of the rule to the Comptroller General  
2 of the United States.

3       “(2) In order to assist the Congress in the exercise of its  
4 functions under this chapter, the Comptroller General may,  
5 on his own initiative, or shall, upon the request of an appro-  
6 priate committee, inform such committee as promptly as  
7 practicable as to whether the Comptroller General considers  
8 the rule to be consistent with the statutory authority under  
9 which the rule was promulgated.

10       “(e) The provisions of paragraphs (2), (3), and (4) of  
11 subsection (a) shall not apply with respect to an emergency  
12 rule if the agency submits to the appropriate committees a  
13 written notice of its determination that the rule is an emer-  
14 gency rule and of the period of time during which the rule  
15 will be effective, and of its intention to issue a final rule to  
16 take effect when the emergency rule expires, if the agency  
17 determines such a final rule is necessary. Any such final rule  
18 shall be subject to all the provisions of subsection (a).

19       **“§ 803. Procedure for committee consideration of resolu-**  
20                               **tions**

21       “(a)(1) With respect to a major rule, the chairman of the  
22 appropriate committee to which it has been referred, or a  
23 Member designated by the chairman, shall introduce an ap-  
24 propriate resolution (by request) no later than the first day of  
25 the session following the day on which the rule is transmitted

1 to the Congress, and the resolution shall be referred to the  
2 appropriate committee.

3 “(2) The appropriate committee to which an appropriate  
4 resolution with respect to a major rule is referred shall under-  
5 take a review of the rule and report the resolution, together  
6 with its recommendations, to the House involved not later  
7 than forty-five days after the date on which the rule is trans-  
8 mitted to the Congress.

9 “(3) If the appropriate committee to which an appropri-  
10 ate resolution with respect to a major rule is referred pursu-  
11 ant to paragraph (1) has not reported the resolution at the  
12 end of forty-five days after the rule is transmitted to the Con-  
13 gress, the committee shall be deemed to be discharged from  
14 further consideration of the resolution, and the resolution  
15 shall be placed on the appropriate calendar of the House  
16 involved.

17 “(b)(1) An appropriate resolution with respect to any  
18 rule other than a major rule shall be referred to the appropri-  
19 ate committee.

20 “(2) It shall be in order to present to the Secretary of  
21 the Senate or the Clerk of the House in writing a motion for  
22 consideration of an appropriate resolution with respect to a  
23 rule other than a major rule at any time after the introduction  
24 of the resolution but not later than twenty-five days after the  
25 rule is transmitted to the Congress.